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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,680	09/19/2003	Kazutoshi Kaizuka	45144-00039	4095

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Squire, Sanders & Dempsey L.L.P.
14th Floor
801 S. Figueroa Street
Los Angeles, CA 90017-5554

EXAMINER

SAFAVI, MICHAEL

ART UNIT	PAPER NUMBER
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3673

DATE MAILED: 06/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/664,680

Applicant(s)

KAIZUKA, KAZUTOSHI

Examiner

M. Safavi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5, 6, 10 and 13-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5, 6 and 13-25 is/are rejected.
- 7) ☒ Claim(s) 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 22, 2005 has been entered.

The indicated allowability of claims 5, 6, and 10 is withdrawn in view of the newly discovered reference(s) to Kubo and Ichikawa et al. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 13-15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not appear to have originally disclosed "a pillow core containing a powder...including perlite, pitchstone, titania (TiO₂), silica (SiO₂), and magnesia (MgO). In other words, the specification had

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not originally disclosed a pillow core containing a powder possessing the particular ingredients spelled out in claim 13.

Claim Rejections – 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 5 is rejected under 35 U.S.C. 102(b) as being anticipated by Kubo.

Kubo discloses providing a “pillow core” and incorporating into said pillow core a powder of about .2% to 5% of the weight of said pillow core, with the powder comprising at least tourmaline, col. 10, line 63. The powder is incorporated into said pillow core by dissolving said powder into a liquid solution and immersing said pillow core into said liquid solution, col. 11, lines 1-8.

Claims 5 and 6 are rejected under 35 U.S.C. 102(a) as being anticipated by Ichikawa et al.

Ichikawa et al. discloses providing a “pillow” core, col. 1, lines 1-7, and incorporating into said pillow core a powder of about .2% to 5% of the weight of said

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pillow core, col. 3 lines 43-45 and col. 4, line 9, with the powder comprising at least perlite, col. 3, line 67. The powder is incorporated into said pillow core by dissolving said powder into a liquid solution and immersing said pillow core into said liquid solution, col. 5, lines 35-37. The powder further comprises at least one far-infrared emitting material including alumina (Al_2O_3), titania (TiO_2), ferrite (Fe_2O_2), chromium oxide (CrO_3), and silica (SiO_2), col. 3, lines 43-44 and line 66 and col. 4, lines 1-5.

Claims 13-16, 18-20, 22, 23, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,787,525 to Sugihara et al.

Sugihara et al. discloses a "pillow" containing tourmaline powder, (means for emitting anions), mixed into at least any one of the pillow core body, (fabric batting sheet), the cover member and the cover material, (fabric surface sheets), col. 1, lines 30-40. The tourmaline, or the powder, is present in an amount ranging from .2% to 5% of the weight of the "core", col. 3, lines 29-42 as well as the various listed examples, (e.g., col. 6, lines 60-65). Any of various "far-infrared emitting" material such as alumina, chromium oxide, and magnesia may be added to further the affect of the pillow, col. 3, lines 45-50.

As concerns claims 15 and 19, (as well as claim 20), the resulting "core" would inherently include constituent materials mixed with the powder.

Claim Rejections – 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16, 18-20, 22, 23, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over the abstract of JP 02003000399A to Suzuki et al. (Suzuki) in view of U.S. Patent No. 5,787,525 to Sugihara et al.

With respect to claims 16, 20, and 23, Suzuki discloses a pillow containing tourmaline powder mixed into at least any one of the pillow core body, the cover member and the cover material. However, Suzuki fails to disclose the specific amount of pillow core containing tourmaline powder of about 0.2% to 5% weight of the pillow core.

Sugihara discloses a layered fabric mattress formed from fibers containing very fine particles of tourmaline in the range of 0.05 to 7% by weight based on the unloaded fibers, preferably 0.05 to 2% by weight. Sugihara further discloses, at col. 3, lines 29-43, that "[w]hen the amount of the tourmaline particles is too small, the amount of active electrons emitted from the fibers would be too small so that the desired advantages in the present invention can not be accomplished...while no particular additional advantages can be obtained by increasing the amount thereof to exceed the above mentioned upper limit rather with an economical disadvantage along with a decrease in the fiber strength." Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the pillow core with tourmaline powder of about 0.2 to 5% weight so as to provide optimal results.

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Further, Suzuki discloses that, in addition to tourmaline powder, zirconium compounds are also used. Sugihara further discloses that besides the tourmaline particles, the fibers are incorporated with fine particles of other inorganic materials such as alumina, magnesia, zirconia and the like known as far-infrared emitting material. (col. 3, lines 44-54) Therefore, Sugihara teaches that zirconia and alumina and magnesia are equivalent materials, and thus the substitution of alumina or magnesia for zirconium would have been within the knowledge of one skilled in the art.

As concerns claims 18, 22, and 25, Suzuki also discloses a covering layer (2) surrounding an inner body (3).

As concerns claim 19, (as well as claim 20), the resulting "core" would inherently include constituent materials mixed with the powder.

Claims 13-15, 17, 21, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki in view of Sugihara as applied to claims 16, 18-20, 22, 23, and 25 above, respectively, and further in view of the abstract to JP 2003-010022.

As concerns claims 13, 17, 21, and 24, Suzuki, as modified, discloses the claimed invention except for a magnet in the pillow core. JP '022 discloses a pillow core comprising a magnet held at the upper surface thereof such that "[b]lood circulation of the head and shoulder periphery is promoted and activation of cell can be achieved by the magnetic action of the held magnet." Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the

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modified Suzuki pillow core with a magnet so as to promote blood circulation. To have further provided any number or type of "poly-element mineral" or "far-infrared emitting" material would have been an obvious expedient to one of ordinary skill in the art since it is well established that merely making something with more effect is not unobvious; *Brunswick Corporation v. Champion Spark Plug Company* 216 USPQ 1 (CA 7 1982).

As concerns claim 15, the resulting "core" would inherently include constituent materials mixed with the powder.

Claims 13-15, 17, 21, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki in view of Sugihara as applied to claims 16, 18-20, 22, 23, and 25 above, respectively, and further in view of the abstract to JP 2003-010022 when further considering U.S. Patent No. 5,787,525 to Lee.

As concerns claims 13, 17, 21, and 24, Suzuki, as modified, discloses the claimed invention except for a magnet in the pillow core. JP '022 discloses a pillow core comprising a magnet held at the upper surface thereof such that "[b]lood circulation of the head and shoulder periphery is promoted and activation of cell can be achieved by the magnetic action of the held magnet." Lee discloses use of a "poly-element mineral" which can include alumina, titania, ferrite, silica, and magnesia, col. 1, lines 33-41. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified Suzuki pillow core with a magnet so as to promote blood circulation as taught by JP 2003-010022. To have further provided any number or type of "poly-element mineral" or "far-infrared emitting" material would have

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been an obvious expedient to one of ordinary skill in the art as taught by Lee and since it is well established that merely making something with more effect is not unobvious; Brunswick Corporation v. Champion Spark Plug Company 216 USPQ 1 (CA 7 1982).

As concerns claim 15, the resulting "core" would inherently include constituent materials mixed with the powder.

Claims 13-16, 18-20, 22, 23, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,787,525 to Sugihara et al.

Sugihara et al. discloses a "pillow" containing tourmaline powder, (means for emitting anions), mixed into at least any one of the pillow core body, (fabric batting sheet), the cover member and the cover material, (fabric surface sheets), col. 1, lines 30-40. The tourmaline, or the powder, is present in an amount ranging from .2% to 5% of the weight of the "core", col. 3, lines 29-42 as well as the various listed examples, (e.g., col. 6, lines 60-65). Any of various "far-infrared emitting" material such as alumina, chromium oxide, and magnesia may be added to further the affect of the pillow. To have provided the Sugihara et al. pillow with any number or type of "poly-element mineral" or "far-infrared emitting" material would have been an obvious expedient to one of ordinary skill in the art as taught by col. 3, lines 45-50 of Siguhara et al. and since it is well established that merely making something with more effect is not unobvious; Brunswick Corporation v. Champion Spark Plug Company 216 USPQ 1 (CA 7 1982).

As concerns claims 15 and 19, (as well as claim 20), the resulting "core" would inherently include constituent materials mixed with the powder.

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Claims 17, 21, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,787,525 to Sugihara et al. as applied to claims 13-16, 18-20, 22, 23, and 25 above, and further in view of the abstract to JP 2003-010022.

JP '022 discloses a pillow core comprising a magnet held at the upper surface thereof such that "[b]lood circulation of the head and shoulder periphery is promoted and activation of cell can be achieved by the magnetic action of the held magnet." Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the Sugihara et al. "pillow" core with a magnet so as to further promote blood circulation.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kubo in view of the abstract to JP 2003-010022.

JP '022 discloses a pillow core comprising a magnet held at the upper surface thereof such that "[b]lood circulation of the head and shoulder periphery is promoted and activation of cell can be achieved by the magnetic action of the held magnet." Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the Kubo "pillow" core with a magnet so as to further promote blood circulation.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Safavi whose telephone number is (571) 272-7046.

The examiner can normally be reached on Mon.-Thur., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford can be reached on (571) 272-7049. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**MICHAEL SAFAVI
PRIMARY EXAMINER
ART UNIT 354**

M. Safavi
June 05, 2005